

**DECISION****THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548**

FILE: B-184182

DATE: *JUL 22 1976*MATTER OF: Robert L. Zerr - Request for Waiver of Salary  
Overpayment

## DIGEST:

Request for waiver of claim by Government under provisions of 5 U.S.C. § 5584 (Supp. IV, 1974) is granted where overpayment resulted from administrative error through no fault of employee, and record does not clearly establish that employee knew, or should have known, that rate of pay actually received at new position was more than rate of pay to which he was entitled.

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This decision is rendered in response to a submission by Thomas E. Noel, Acting Assistant Administrator, Management and Administration, Federal Energy Administration (FEA), dated June 5, 1975, requesting a waiver under the provisions of 5 U.S.C. § 5584 (Supp. IV, 1974) of collection of erroneous payments of salary made to Robert L. Zerr.

The record indicates that as an employee of the FEA Mr. Zerr was overpaid in the gross amount of \$1,476.80 during the period from July 7, 1974, through February 16, 1975, due to an administrative error. Mr. Zerr was appointed to a position in the Federal Service in the Kansas City, Missouri Region of the FEA on July 7, 1974, at a GS-12, step 7 level based upon an administrative misunderstanding with the Internal Revenue Service (IRS), instead of at the GS-12, step 3 level to which he was entitled. It appears that Mr. Zerr, while employed by the IRS, was given a temporary promotion to a GS-13, step 1, effective April 14, 1974, with a "Not to Exceed" date of June 30, 1974. During a preliminary record check made by the FEA, the IRS Personnel Office stated that Mr. Zerr's grade was GS-13, step 1, and based upon this information, Mr. Zerr was given a position at the GS-12, step 7 level upon his entrance on duty with the FEA.

The submission also contains the following statement:

"We feel that Mr. Zerr could not have been expected to be familiar with the regulations

for establishing rates of pay or to have known that he was being overpaid. There is no indication of fraud, misrepresentation, fault or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. As his pay was in accordance with the official personnel action which he received, he had no reason to question it."

This Office agrees with the recommendation made by the FEA that Mr. Zerr's indebtedness be waived. The erroneous payment occurred through administrative error, and there is no indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim. 4 C.F.R. § 91.5(c) (1976). The record indicates that the employee did not receive an unexplained increase in pay but was appointed to a position in the FEA at a rate of pay which was based upon the rate of pay he had last received at the IRS. Furthermore, Mr. Zerr was not familiar with the Federal Personnel Regulations and, therefore, accepted the interpretation of the regulations by a personnel specialist at the FEA. Under these circumstances it is our opinion that the record clearly establishes that Mr. Zerr neither knew, nor should have known, that the rate of pay actually received at the new FEA position was more than the rate of pay to which he was entitled. See B-181943, May 15, 1975, and B-182188, January 22, 1975.

Accordingly, since there was an administrative error and there is no indication of fault on the part of Mr. Zerr, collection of the overpayment in the amount of \$1,476.80 is hereby waived under the provisions of 5 U.S.C. § 5584 (Supp. IV, 1974).

R.F. KELLER

Deputy

Comptroller General  
of the United States